

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON F. INMAN, A/K/A "J-BIRD,"

Defendant.

Case No. 2:07-cr-00145-KJD-PAL

REPORT OF
FINDINGS AND RECOMMENDATION

(Mtn Suppress - Dkt. #405)

Before the court is defendant Jason F. Inman's Motion to Suppress (Dkt. #405) which was referred to the undersigned for a report of findings and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The court conducted an evidentiary hearing on February 5, 2009. At the conclusion of the evidentiary hearing, counsel for Inman requested an opportunity to file supplemental points and authorities on a Sixth Amendment issue. The court gave counsel for the defendant two weeks to file supplemental points and authorities and the government two weeks from service of a supplemental memorandum in which to file a responsive memorandum. The court has considered the original motion, the Government's Response (Dkt. #460), Inman's Supplemental Points and Authorities in Support of Defendant's Motion to Suppress Statement (Dkt. #518), the Government's Response to Defendant's Motion to Suppress and Supplement (Dkt. #528), and the evidence adduced and arguments of counsel at the evidentiary hearing.

BACKGROUND

Inman is charged in a Superseding Indictment (Dkt. #181) returned May 20, 2008 with conspiracy to engage in a Racketeer Influenced Corrupt Organization ("RICO") in violation of 18 U.S.C. § 1962(d). The superseding indictment alleges that Inman is a "Bolt Holder" of the Aryan Warriors, a race-based criminal gang operating inside the Nevada state prison system. He is alleged to

1 have conspired with his co-defendants to commit criminal acts to further the purpose of the Aryan
2 Warriors criminal enterprise in a pattern of racketeering activity. The indictment alleges that as a “Bolt
3 Holder” of the Aryan Warriors, Inman “engages directly and indirectly in criminal acts including, but
4 not limited to, drug trafficking, violent acts, extortion, corruption of public officials, unauthorized use
5 and possession of access devices, and gambling schemes.” Superseding Indictment (Dkt. #181), ¶ 24.
6 A “Bolt Holder” is a “full member” of the Aryan Warriors. *Id.*, ¶ 9. To become a full member, a
7 prospect must commit an act of violence on another inmate at the direction of Aryan Warriors’ leaders.
8 A Bolt Holder is “expected to continue to engage in acts of violence at the direction of the Horn
9 Holders [leaders] to eventually advance and become a Horn Holder.” *Id.*, ¶¶ 8, 9.

10 **I. The Parties’ Arguments**

11 **A. Inman’s Motion to Suppress**

12 In the current motion, Inman seeks to suppress statements made January 19 and 20, 2006 while
13 incarcerated in the Clark County Detention Center (“CCDC”), awaiting sentencing on a state charge of
14 conspiracy to violate the Controlled Substance Act by introducing drugs into the Nevada state prison.
15 On both days, he was interviewed by Special Agent Travis Johnson of the FBI and Kelly Reynolds of
16 the Nevada Attorney General’s Office who were part of a joint state and federal anti-terrorism task
17 force investigating the Aryan Warriors. Inman seeks to suppress inculpatory admissions made during
18 these interviews, asserting Johnson and Reynolds made promises of leniency, offered to help him find
19 employment, and threatened him with greater punishment if he did not agree to cooperate by providing
20 information about the Aryan Warriors and his involvement in the organization. The motion asserts that
21 Inman was dissuaded from seeking counsel and was induced by promises of leniency, which were not
22 fulfilled, to make inculpatory statements. He asked for an evidentiary hearing, asserting the evidence
23 would establish that he did not knowingly, voluntarily, or intelligently waive his right to counsel or
24 knowingly waive his right to remain silent. Rather, Inman argues, he was manipulated by experienced
25 agents to waive his rights and “threatened, cajoled and tricked” into waiving his rights.

26 In his supplemental points and authorities, Inman argues, citing *Massiah v. United States*, 377
27 U.S. 201 (1964), that the agents who interviewed him in the CCDC either knew or should have known
28 that he was represented by counsel, and that their failure to contact his counsel prior to interviewing

him violated his Sixth Amendment Rights. Counsel for Inman argues that Inman was “desperately in need of counsel” before speaking to Johnson and Reynolds because he was facing state charges and was aware he was being investigated for federal RICO violations. At the time of the interview, Inman was both fearful of the Aryan Warriors gang members and concerned about the outcome of his pending state case and the possibility he would be indicted on federal RICO charges. Counsel for Inman acknowledges that Inman asked to speak to Investigator Kelly Reynolds but asserts that the government overreached by interviewing him without first contacting Inman’s state case counsel before debriefing him on January 19, 2006. Acknowledging that Inman initially contacted Reynolds, counsel for Inman argues Johnson and Reynolds “knowingly exploited his vulnerability by interrogating him without ever notifying his counsel.” Supplemental Points and Authorities (Dkt. #518), 5:25-26. Finally, Inman argues Johnson and Reynolds “promised, directly or impliedly to him, that they would not use anything against him of an incriminating nature.” *Id.*, 5:28 - 6:1. He characterizes their representations as deceitful and manipulative behavior that violated Inman’s Sixth and Fourteenth Amendment rights.

B. The Government’s Response

In response, the government argues that Inman requested a meeting with Investigator Kelly Reynolds while he was in custody in CCDC. Before interviewing Inman in CCDC, Reynolds and Johnson read Inman his Miranda warnings, using a standard FBI “Advice of Rights” form which Inman initialed and signed. The government denies that Johnson and Reynolds made any promises to Inman to induce him to talk and contends that he was not threatened, tricked, or cajoled into waiving his rights. The government asserts that his statements were voluntary and, therefore, admissible.

The government’s response to Inman’s supplemental points and authorities argues that because it is undisputed Inman initiated the meeting with Reynolds, he could, and did, waive his right to counsel under the Sixth and Fourteenth Amendments. Thus, the court should determine only whether Inman’s statements were knowing and voluntary after receiving and waiving his rights under Miranda. The government also relies on a line of Supreme Court decisions holding that the right to counsel under the Sixth Amendment does not attach until a defendant is charged and is offense-specific. Police officers may constitutionally talk to suspects about uncharged crimes, even those that are “factually related” to an offense with which the defendant is charged and represented by counsel. Although the government

acknowledges that Inman's state drug charges were related to his activities as an Aryan Warrior, his federal RICO conspiracy charge and his state drug charges are not the same offenses and are prosecuted by separate sovereigns. Finally, the government asserts that because Inman received and signed an Advice of Rights form before the interview which expressly acknowledged that anything he said could be used against him and testified at the evidentiary hearing that he knew Reynolds could only talk to her boss, his testimony that he expected that "nothing would come of it" is "ludicrous."

The government has attached certified copies of Inman's Guilty Plea Agreement, Amended Information and Judgment of Conviction in the state drug case which was pending at the time of the interview and moves for the admission of these documents pursuant to Federal Rule of Evidence 902. The exhibits establish that Inman entered into a guilty plea agreement, pled guilty to attempt conspiracy to violate the Uniform Controlled Substances Act on January 25, 2006, and was sentenced to twelve to thirty months on March 16, 2006.

II. Evidence Before the Court

The government attached the Advice of Rights form which Inman initialed and signed on January 19, 2006 at CCDC as Exhibit "1" to the government's Response (Dkt. #460) which was marked and admitted as government's Exhibit "1" at the evidentiary hearing. The government called three witnesses, and Inman testified on his own behalf.

A. Testimony of Anthony Ruggiero

Ruggiero is currently employed as a chief investigator for the Nevada Consumer Affairs Division. However, in January 2006, he was an investigator with the Nevada Attorney General's Office. Sometime in January 2006, he was assigned to transport Inman from a northern Nevada prison to CCDC. He met his northern Nevada counterparts in Tonopah, Nevada, at the Department of Transportation building where Inman was transferred to his custody. Inman was in custody on an outstanding warrant arising out of an Attorney General's Office investigation. Ruggiero was accompanied by his partner, J.T. Healy. Ruggiero and Healy took Inman in their custody and placed him in their vehicle to take him to CCDC. Because the vehicle did not contain a cage or protective shield between the front and back seats, Inman was placed on the passenger side of the back seat, and Ruggiero sat next to him.

1 Ruggiero testified that when he initially made contact with Inman, he initiated “small talk” to
2 assure Inman that if there were no problems or troubles, this was “just a trip to CCDC.” Inman was
3 cooperative and very talkative and began making statements that his case was “no big deal.” Ruggiero
4 responded to Inman’s initial statements by telling him that before he said anything else, Ruggiero would
5 advise Inman of his rights. Ruggiero took out his standard Advisement of Rights card which he always
6 keeps in his wallet and read Inman his Miranda warnings. Ruggiero read into the record the contents of
7 the Rights of Persons card from which he advised Inman of his Miranda rights. Inman responded that
8 he understood.

9 During the transport, Ruggiero described Inman as a “nice enough young man” who was very
10 comfortable and very talkative en route. Inman talked about his new girlfriend and described his
11 charges as “no big deal.” He also began describing to Ruggiero how to make methamphetamine by the
12 “cold method,” stating that the product was not as good as the more traditional method but “still good.”
13 Inman also started talking about his state case and indicated that Kelly Reynolds was the investigator.
14 Ruggiero knew who Kelly Reynolds was but had no idea that she was the investigator in Inman’s case.
15 Ruggiero did not question Inman about his pending state case and testified that “to this day” he had “no
16 idea what it is about.” Inman asked Ruggiero to tell Reynolds Inman wanted to see her. Ruggiero
17 described the transport as “an uneventful ride.” When they arrived at CCDC, Inman was turned over to
18 the custody of a corrections officer at the facility, and Ruggiero and his partner left.

19 On cross examination, Ruggiero testified that although he had worked before with Kelly
20 Reynolds at the Attorney General’s Office, they were in different units and did not often work together.
21 During Inman’s transport to CCDC, the only inculpatory statements Inman made were about his
22 knowledge about how to make methamphetamine. Ruggiero reiterated that although he was aware
23 Inman was being taken into custody on a warrant, he did not know what Inman was charged with when
24 he picked up Inman. He had not spoken with Reynolds and was not aware that Inman was in custody
25 on her case until Inman mentioned it during the ride. He was not aware that Inman was believed to be
26 an Aryan Warrior. Ruggiero did not make any promises to Inman if he cooperated or made statements.
27 He only said he would tell Kelly Reynolds that Inman wanted to talk with her. Inman was very
28 talkative during the ride, and Ruggiero would be surprised to hear that Inman had previously refused to

1 talk to law enforcement officers. Inman just said he wanted to take care of his pending case and that it
2 was no big deal. Ruggiero did not have any information about his case or any authority to assist Inman
3 to resolve his case.

4 **B. Testimony of Kelly Reynolds**

5 Reynolds is a senior investigator with the Nevada Attorney General's Office. She has been
6 employed by the Nevada Attorney General's Office as a law enforcement officer since 1996. She has a
7 degree in Criminal Justice, completed the Police Academy, and has a Category One POST Certification
8 and Advanced POST Certification. In January 2006, she was an investigator with the Nevada Attorney
9 General's Office and was involved in an investigation involving Inman for some time. She did not
10 specifically recall for how long but believed it was since May 2005. She obtained a warrant arising out
11 of her investigation from a state judge for Inman's arrest on a charge of introducing drugs into the
12 Nevada state prison system. The investigation intercepted phone calls and letters between inmates and
13 women on the outside who were being used to introduce drugs into the prison system. Prior to January
14 2006, she had not interviewed Inman in connection with her investigation but had interviewed other
15 witnesses. She did not specifically recall when the warrant was filed but knew it was sometime prior to
16 January 2006. At the time the warrant was returned, Inman was still incarcerated at High Desert State
17 Prison. A detainer was placed on him as a result of the new state charge. Inman finished his sentence,
18 was taken to court on the new charge, and was released on bail on the charge arising out of her
19 investigation. He was in Las Vegas, was released on bail, and at some point went to Reno.

20 Reynolds became aware Inman was arrested in Reno and believed it was on a battery domestic
21 violence charge. This new arrest violated the conditions of his bail, and he was, therefore, taken back
22 into custody on the state charge involved in her investigation. Reynolds found out that Inman was in
23 CCDC from Ruggiero who had transported him to CCDC. Ruggiero told her that Inman wanted to talk
24 with her. As a result, Reynolds contacted Special Agent Travis Johnson. She and Johnson were
25 members of a joint task force on terrorism, working on an investigation of the Aryan Warriors. Both
26 went to see Inman at CCDC. Inman was placed in an interview room by corrections officers. She
27 described the interview room as sparse with a table and a couple of chairs. It was a ten by twelve-foot
28 or twelve by twelve-foot room with a window that was covered. Both officers were in plainclothes and

1 unarmed. Inman was not in handcuffs while he was interviewed and was "very eager to speak with us."
2 Prior to the interview, the agents mirandized Inman, using a standard FBI Advisement of Rights form.
3 The rights were read aloud to Inman, and he was instructed to read along. Inman initialed and signed
4 the form. Exhibit "1" was identified as the Advice of Rights form which Inman initialed and signed on
5 January 19, 2006, acknowledging he had read, understood, and waived his rights. Both Reynolds and
6 Johnson also signed the form. Although he had asked to speak with Reynolds, Inman was advised of
7 his *Miranda* rights because he was in custody. Reynolds was "very confident" Inman understood his
8 rights and reiterated that he was willing and eager to talk.

9 Reynolds initiated the interview with the question, "Tell me about the Aryan Warriors." The
10 interview lasted approximately one and a half hours. Exhibit "2" is the FBI 302 summary of the
11 interview that Special Agent Johnson prepared, and Reynolds signed. It accurately summarizes the
12 substance of the interview with Inman on January 19, 2006. She summarized some of the information
13 Inman provided during the interview about the Aryan Warriors in her testimony.

14 Reynolds testified that Inman was not promised anything. When asked whether Inman asked
15 her for anything, Reynolds responded that Inman offered to work for them. Inman said he was going to
16 be released, and he could work for the investigators on the outside. Inman was confident he was going
17 to be released. Reynolds responded that they would consider what he had told them and consider his
18 offer. Reynolds was asked what, if anything, she discussed with Inman concerning his state pending
19 charges. Reynolds told Inman that she could not make any offers or promises but that she would speak
20 to the prosecutor on the case and let the prosecutor know that Inman was cooperating. Reynolds did not
21 tell Inman anything about a joint terrorism task force investigating the Aryan Warriors or that there was
22 a pending federal investigation. Reynolds could not recall Inman asking her about any federal
23 investigation. Special Agent Johnson was identified as Agent Johnson. She could not recall whether he
24 was introduced as an FBI agent or whether she told Inman Johnson was from the FBI.

25 In response to a question about whether Inman expressed any concerns regarding when he got
26 out of custody, Reynolds testified he was supposed to contact Egan. Inman stated he was concerned
27 because he had not contacted Egan and, therefore, might be on a hit list. Egan had contacted Inman's
28 mother to relay a message that Inman should call Egan.

1 When asked what Reynolds did for Inman after the interview, Reynolds responded “nothing at
2 all.” After the interview, she contacted Special Agent Hunt [the federal case agent] to advise him of the
3 interview and Inman’s offer and to inquire whether Hunt was interested in having Inman work for the
4 government. Hunt responded that he did not believe Inman would be “trustworthy or credible out loose
5 on the streets” and was not interested in having him work for the government.

6 On cross examination, Reynolds testified that she did not recall whether she had had any prior
7 contact with Inman before January 19, 2006. When asked how Inman knew her name to request that
8 she see him, Reynolds responded that she was the investigator who submitted the criminal complaint.
9 She went to CCDC with Special Agent Johnson to get information about the Aryan Warriors. She did
10 not recall whether the first question Inman asked was what Reynolds could do for him. She was not
11 aware of the number of his prior convictions but was aware he had been incarcerated in the past. She
12 did not recall whether he had an attorney assigned and did not recall whether she checked out whether
13 he had an assigned attorney, although this is something she would ordinarily do. She did not recall
14 whether she did so this time. She did not recall whether she was aware of Inman’s education, but she
15 did not believe he had a college education. She would not be surprised if he had a tenth or eleventh
16 grade education. He understood English, read the form, and based on that, she believed he understood
17 his rights.

18 She testified Inman wanted to speak with her. When asked whether Inman had some fear he
19 might be in jeopardy, she responded she did not know. When asked about the statements Inman made
20 about Egan and being on a hit list, Reynolds could not recall Inman asking for protection. Reynolds
21 was aware that Inman wanted something from her for cooperating, but did not recall whether Inman
22 asked her for something “right up front.” Reynolds and Johnson did go back to CCDC the next day and
23 told Inman they were not interested in having him work for the government.

24 Inman’s statements to Reynolds and Johnson at CCDC were not recorded. When asked whether
25 it is the policy of the Attorney General’s Office not to record statements, Reynolds responded it was
26 discretionary with the interviewing investigator. The FBI was in charge of the investigation. Johnson
27 was not identified as an FBI officer, did not show his FBI credentials, and Reynolds did not recall
28 whether Johnson was asked to show his credentials. He was identified as her partner. She did not

1 know whether Inman would have been willing to give a statement if he was aware he was talking to the
2 FBI as opposed to someone from the state Attorney General's Office. Inman wanted to cooperate. The
3 January 19, 2006 interview lasted an hour and half, and there were no problems during the course of the
4 interview. Inman was not asked to give a written statement.

5 On redirect, Reynolds testified that the fourth line on the Advisement of Rights form Inman
6 signed prior to the interview advised him that he had the right to talk with a lawyer before questioning.
7 She also testified that she was aware Inman pled guilty to the criminal complaint for introducing drugs
8 into a prison facility.

9 In response to questions from the court, Reynolds acknowledged that when she interviewed
10 Inman at CCDC on January 19, 2006, she was aware that Inman was in custody on the state felony
11 charge for introducing drugs into a prison facility. She was also aware that he had gone to court, had
12 been released on bail, and was rearrested on a subsequent battery domestic violence case. She
13 understood he had appeared in Nevada state court and understood that he had counsel. However, she
14 did not talk with Inman at all about whether he wanted counsel present except for reading the
15 information about his right to counsel from the Advice of Rights form.

16 On further redirect examination from counsel for the government, Reynolds was asked whether
17 she discussed the pending state charges for which Inman had appointed counsel with Inman. Reynolds
18 responded that she indicated that she would speak to the prosecutor and notify the prosecutor that Mr.
19 Inman was cooperating.

20 **C. Testimony of Travis Johnson**

21 Johnson is a special agent with the FBI who was stationed in Las Vegas between June 2003 and
22 May 2006. He was assigned to the joint terrorism task force and participated in an investigation of the
23 Aryan Warriors. The investigation was ongoing, and no charges had been filed at the time of his
24 transfer. In January 2006, he was asked by Kelly Reynolds to participate in an interview of Inman at
25 CCDC. He had only been involved in the investigation for approximately one month and described his
26 knowledge of the investigation as "terse." Reynolds asked most of the questions while he took notes to
27 record what was said. The interview occurred in an interview room at CCDC. Neither officers were
28 armed, and he did not believe that Inman was in handcuffs during the interview. The interview began

1 with Investigator Reynolds reading Inman Miranda warnings and showing Inman the Advice of Rights
2 form. Inman initialed each right and signed the written waiver. Johnson identified his signature as a
3 witness on Exhibit "1." Government's Exhibit "4" was identified as eleven pages of the handwritten
4 notes he took during the interview. The last page of Exhibit "4" is a photocopy of the Advice of Rights
5 form Inman signed. Johnson could not recall if he asked Inman any questions during the interview.
6 Reynolds introduced Johnson as her partner, not as an FBI agent.

7 When asked how the interview began, Johnson responded that Inman asked a couple of
8 questions. However, he could not specifically recall what questions Inman asked. Reynolds was not
9 receptive to providing Inman any information. Johnson testified that they were not there to answer his
10 questions, and "it was supposed to be the other way around." Inman asked questions about the Aryan
11 Warriors' investigation. The point of this interview was to obtain any information Inman wanted to
12 provide about his participation in the Aryan Warriors.

13 Johnson stated that neither he nor Reynolds made Inman any promises for divulging information
14 about the Aryan Warriors. Inman did not specifically ask for anything. Inman "implied" he would
15 provide evidence for the government against the Aryan Warriors. Johnson took as many notes as
16 possible because he was not familiar with the organization, and many nicknames were used referring to
17 the different members. He did not have an understanding of all of this and wanted to write an accurate
18 report. Special agents are not allowed to make any promises. If Inman had asked for any promises,
19 Johnson would have recorded his requests in the notes.

20 Johnson characterized the atmosphere during the interview as regular conversation in which
21 Reynolds was asking the questions, and Inman answered and elaborated. When asked whether Inman
22 expressed any fear about his involvement in the Aryan Warriors during the interview, Johnson
23 responded that at one point Inman said he may have had a hit against him by the Aryan Warriors.
24 When asked whether the investigators made any promise of protection against the Aryan Warriors,
25 Johnson responded "nothing." After the interview, Johnson compiled his notes in a written FBI 302
26 report. He also communicated with Special Agent Hunt in a telephone conference or by e-mail
27 describing what happened in the interview.

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1 At the conclusion of the January 19, 2006 interview, Reynolds and Johnson told Inman they
2 would take his willingness to work for the government back to their supervisors and report back to him.
3 Johnson and Reynolds returned to CCDC the following day and told Inman that all of the information
4 he had provided was historical, that he had not provided any useful information, and that unless he had
5 anything more significant to add, "there would be nothing more we would doing with him." The
6 interview was not tape recorded because it requires special approval within the FBI, and they did not
7 have time to seek approval. At no point during the interview did Inman seek to terminate the interview
8 or ask for a recess or pause.

9 During the January 20, 2006 interview, Inman's "whole mood had changed." His posture was
10 in a closed position with his arms crossed and had a "closed-off attitude" before anything was said.
11 Inman was again mirandized before the January 20, 2006 interview. Johnson believed a written waiver
12 was obtained and preserved for evidentiary purposes.

13 On cross examination, Johnson testified that he had only been working on the Aryan Warriors'
14 case for about a month prior to the January 19, 2006 interview at CCDC. He spoke with Reynolds at
15 the FBI office before the interview. When asked whether persons in prison who are being interviewed
16 normally expect something in return for cooperation, Johnson responded that he had not interviewed
17 many suspects in prison and that this was perhaps the second or third time he had interviewed someone
18 in prison.

19 Johnson testified that he did not know whether Inman had an attorney and that Inman did not
20 "specify" he had an attorney. However, Johnson acknowledged that most people who are in jail have
21 an attorney. Inman did not specifically ask for any promises and did not state he wanted his state
22 sentence changed. Johnson could not recall whether Inman asked for protection when mentioning there
23 might be a hit against him. Johnson did not believe Inman when he stated there might be a hit against
24 him and did not take his statement about a hit seriously because Inman was still in the Aryan Warriors.
25 Additionally, Inman was no longer incarcerated in Ely, Nevada, and there were no Aryan Warriors
26 present in CCDC to his knowledge.

27 Johnson reiterated that on January 20, 2006, Inman was told the case agent decided that his
28 information was "history" and could not be used. Inman was not told that the information he had

1 provided Reynolds and Johnson could not be used against him. Neither Johnson nor Reynolds
2 suggested otherwise. The purpose of interviewing Inman at CCDC was not to talk about his state
3 charge but to interview him about the Aryan Warriors. Johnson did not believe Inman was expressly
4 told this and testified that he did not believe they needed to inform him of this because Inman knew
5 why they were there. Johnson also reiterated he did not recall what Inman's questions were to the
6 investigators. Johnson testified he did not take any notes memorializing what questions Inman asked
7 because "we weren't there to provide information" to Inman.

8 **D. Testimony of Jason Inman**

9 Inman was canvassed by the court and acknowledged he was aware that he had the right to
10 testify or not and could not be compelled to testify. After discussing the matter with counsel, he
11 decided he wanted to testify. He was advised by counsel of his rights and possible adverse
12 consequences of testifying, including for sentencing purposes.

13 Inman is thirty-three years old and graduated from Sparks High School. For fourteen and a half
14 of the last fifteen years, he has been incarcerated. He has six felony convictions for possession of a
15 stolen motor vehicle, possession of a controlled substance, two convictions for conspiracy to violate the
16 Controlled Substance Act, and attempted auto burglary. His most recent conviction occurred in January
17 2006. He also has a misdemeanor battery conviction. He was released from CCDC on his most recent
18 state felony drug charge on July 25, 2005 when his family posted bail on his behalf. He received
19 permission to leave Las Vegas and went to Reno where he had a girlfriend, got a job, and was staying
20 out of trouble until his arrest for domestic violence. As a result of this arrest, he was brought back to
21 Las Vegas after making a deal in Reno with authorities to run the battery domestic violence conviction
22 concurrent with the pending felony charge of conspiracy to violate the Controlled Substance Act
23 pending in Las Vegas. He did this because he knew the Attorney General's Office would have to pick
24 him up before the expiration of his six-month sentence on the misdemeanor battery charge.

25 He recognized Ruggiero as the officer sitting next to him in the back seat while he was
26 transported from Northern Nevada to CCDC. Ruggiero and his partner were "real nice," gave him
27 cigarettes, and they engaged in small talk during the ride. Inman knew that Reynolds had been
28 investigating him for years and asked Ruggiero to talk with Kelly Reynolds because Inman wanted to

1 talk with her. Inman was aware at the time he asked Ruggiero to ask Reynolds to visit him that he was
2 being investigated for RICO charges. However, Inman did not mention any RICO investigation to
3 Ruggiero. He merely told Ruggiero he wanted to talk to Kelly Reynolds.

4 Inman testified that on three or four prior occasions, he had been contacted by law enforcement
5 officers for an interview. He believed the first time he was contacted was on October 15, 2004 when
6 his girlfriend and another girl were being investigated about smuggling drugs into the prison. Two
7 officers brought a tape recorder with them. Inman and his co-defendant remained silent and said
8 nothing. The interview occurred at the High Desert Prison. The officers were asking questions about
9 his drug case but not about the Aryan Warriors. Inman walked out of the interview.

10 The second interview occurred sometime after "Blind Man" was stabbed in January 2005.
11 Special Agent Bob Hunt and Mike Quick came to interview him. Inman testified that he knew that
12 Hunt was the "shot caller" although Hunt did not ask many questions. The second interview also
13 occurred at High Desert. Inman made no statements. However, the officers told him he should
14 cooperate because the "boat was sinking and there are only a few life rafts," and Inman wanted to be on
15 one of them. The agents did not ask Inman much but talked to him and made him feel like he was
16 "pretty much screwed." Inman asked what the agents wanted, stating he was a "nobody." The agents
17 responded "we know you are a nobody, but tell us about money you were kicking up to the
18 Brotherhood."

19 Approximately three months later, Bob Hunt and Mike Quick again came to see him at High
20 Desert. The agents told him that this was his last chance before he got out of custody "to jump on a life
21 raft." The agents received special permission from the warden to have Inman's girlfriend, Marian
22 Downs, present during the interview. The agents wanted Inman and Downs to cooperate and did most
23 of the talking. Inman told the agents that there was nothing he could add and that the agents knew more
24 about the Aryan Warriors than he did. Inman was told that his choices were to be debriefed or get
25 indicted. Inman responded no because he did not kick money up to the Aryan Warriors and did not stab
26 Blind Man.

27 When asked on direct examination why he changed his mind and decided to talk with Reynolds
28 in January 2006, Inman responded that he wanted help on his state case, and he did not want to be

1 indicted on RICO charges. He was promised that if he did not debrief, he would be "RICO'd." Six to
2 eight months had passed since he was last interviewed by law enforcement. What changed his mind
3 was the fact that he was out, he had a job and a girlfriend, and he did not want to go back to prison.
4 Inman asked Reynolds if she would keep him out of prison if he talked. Reynolds responded that she
5 would go and talk with her boss and that they could not make any promises right there. Reynolds told
6 Inman three times during the January 19, 2006 interview that she was not wearing a wire in response to
7 his questions concerning whether she was. Inman understood that "nothing would ever come of" his
8 January 2006 interviews with Reynolds and Johnson. Inman believed this "because it wasn't being
9 recorded." Inman did not realize who Johnson was and would not have given a statement if he realized
10 Johnson was FBI. Inman has read Johnson's 302 report of the interview and initially responded that the
11 report was accurate. However, he immediately modified his statement to clarify that a lot of it was
12 accurate, but not all of it.

13 Inman testified he told Reynolds and Johnson that there was a hit out on him and that he wanted
14 protection. That was the whole point of his interview. He had been released from jail and asked for
15 permission to leave Las Vegas and could not get out of there soon enough. He had made promises to
16 "these guys," but he had not kept his promises and was worried for his safety. He was still willing to
17 assist but wanted some assurances they [the government] would help him. He had promised the Aryan
18 Warriors he would be involved in the street program in Las Vegas but had not kept his promise.

19 Inman agreed that when he was interviewed the following day on January 20, 2006, his mood
20 had changed. He had been contacted by co-defendant Egan in CCDC. Egan had contacted Inman's
21 mother and told her that Inman should call Egan. Inman called Egan. Egan told Inman he just got out
22 of jail eleven days ago and "hold your mud or else." Inman was afraid of Egan. Inman explained to
23 Reynolds and Johnson that he had been contacted by Egan and that this was the reason for his change in
24 attitude. Inman asked Johnson and Reynolds for help on January 20, 2006. They said no. Evidently,
25 they had spoken to Bob Hunt who said nothing helped, nothing hurt. Inman testified "they promised
26 me nothing would ever come of it – ever." They told Inman they were there because they said they
27 would come back, and "nothing will come of this." Reynolds and Johnson also asked Inman about
28 additional information about what was going on in Pahrump at the second interview on January 20,

1 2006, but Inman could not help them. Inman had not been in Pahrump or Las Vegas for any length of
2 time and testified he did not know "these people down here." He testified he did not know any of his
3 co-defendants except for Egan and Crossman.

4 On cross examination, Inman acknowledged that he has heard of most of these guys, referring to
5 his co-defendants, but had never met Sellers or Krum. He reiterated that he did not ask for an attorney
6 before speaking with Reynolds and Johnson and that he asked to talk to Reynolds because he wanted
7 her help on his pending state case.

8 He has been in prison for many years and knows it is common to be interviewed concerning
9 attacks in prisons. He denied that he was associated with the Aryan Warriors but stated he had been on
10 the same yard with these guys for fifteen years. He realized he was under investigation in the Aryan
11 Warriors case in January or February 2005 when Reynolds served a search warrant on Marian Downs'
12 house. In approximately March 2005, agents came to see him about the Aryan Warriors. Inman did not
13 know that Reynolds was involved in the Aryan Warriors investigation but knew she served a search
14 warrant concerning state drug charges.

15 He spoke with Reynolds about the Aryan Warriors because that is all she wanted to talk to him
16 about. He reiterated that Reynolds and Johnson told him that nothing would come of his interview
17 because it was not going to help or hurt him. Inman was not promised that he would not be charged or
18 that he would be given immunity for his statements. They did not make him any promises other than
19 they were going to talk to their bosses and get back to him. Inman went over the Advice of Rights form
20 before the interview and did not ask for an attorney before the interview.

21 By January 2005, he was aware of the federal government's interest in him in the Aryan
22 Warriors investigation. The reason he wanted to speak with Reynolds in January 2006 was to discuss
23 the Aryan Warriors, and that was all that was discussed in the interview. Reynolds and Johnson did not
24 scare him at any point during the interview and did not make any specific promises to him other than
25 that they would talk to their bosses. Neither Johnson nor Reynolds threatened Inman at any point
26 during the interview.

27 In response to questions by the court, Inman testified that he agreed to speak with Reynolds and
28 asked her for help on his state case and to talk to the FBI about RICO charges. Reynolds told Inman

1 that she would talk to her bosses and whoever else was in charge of the investigation and come back to
 2 see him. Reynolds clearly conveyed that she did not have any authority to promise him anything.
 3 However, Reynolds said she would check with Bob Hunt and her boss to see what, if anything, they
 4 could do for him. When Reynolds returned the following day, she said they could not do anything for
 5 him and that nothing would come of his statements. He understood this to mean his statements would
 6 not be used against him. When he went for sentencing on his state court case, he was represented by
 7 counsel who was present. No one on behalf of the state told the judge anything with respect to whether
 8 he had or had not cooperated.

9 DISCUSSION

10 A. Inman's Fifth Amendment Arguments

11 The Fifth Amendment provides in pertinent part that "[n]o person . . . shall be compelled in any
 12 criminal case to be a witness against himself." U.S. Constitution, Amendment V. The privilege against
 13 self incrimination applies to the states through the Fourteenth Amendment. See Malloy v. Hogan,
 14 378 U.S. 1, 8 (1964). In Miranda v. Arizona, 384 U.S. 436, 444 (1966), the Supreme Court established
 15 a procedural mechanism to safeguard the Fifth Amendment privilege against the inherently coercive
 16 nature of custodial interrogation. Miranda held that before the prosecution can admit a defendant's
 17 incriminating statement, it must prove that the accused waived his or her right against self
 18 incrimination. The decision created the requirement to administer *Miranda* warnings which are so well
 19 known, that they "have become part of the national culture." Dickerson v. United States, 530 U.S. 428,
 20 443 (2000).

21 "For inculpatory statements made by a defendant during custodial interrogation to be admissible
 22 in evidence, the defendants 'waiver of Miranda rights must be voluntary, knowing, and intelligent.'" United States v. Garibay, 143 F.3d 534, 537 (9th Cir. 1998). "The validity of a Miranda waiver
 23 depends on the totality of the circumstances and whether the defendant 'was aware of the nature of the
 24 right being abandoned and the consequences of the decision to abandon it.'" United States v. Labrada-
 25 Bustamante, 428 F.3d 1252, 1259 (9th Cir. 2005) (citing United States v. Younger, 398 F.3d 1179,
 26 1185 (9th Cir. 2005)).

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1 There is a presumption against waiver. North Carolina v. Butler, 441 U.S. 369, 373 (1966).
2 The prosecution bears the burden of proving by a preponderance of the evidence that a defendant
3 knowingly and intelligently waived his Miranda rights. See Colorado v. Connelly, 479 U.S. 157, 168
4 (1986). To meet its burden, the prosecution must establish that under the “totality of the
5 circumstances,” the defendant was aware of “the nature of the right being abandoned and the
6 consequences of the decision to abandon it.” Moran v. Burbine, 475 U.S. 412, 421 (1986).

7 Inman argues he did not knowingly, voluntarily, or intelligently waive his right to counsel or his
8 right to remain silent but was manipulated by experienced agents to waive his rights and “threatened,
9 cajoled and tricked” into waiving his rights. The record before the court does not support these
10 arguments. There was also no support in the record developed at the evidentiary hearing to support
11 statements made in his written motion that he was promised leniency, offered help in finding
12 employment, or threatened with greater punishment by Reynolds and Johnson.

13 It is undisputed that Inman asked to speak to Reynolds while being transported to CCDC by
14 Ruggiero and his partner. Ruggiero testified Inman was very talkative, initiated conversation, and
15 began making statements that his pending state court case was “no big deal.” As a result, Ruggiero
16 advised Inman of his Miranda rights, reading from a standard Advisement of Rights card he always
17 keeps in his wallet. Inman indicated he understood his rights and made inculpatory statements about
18 his knowledge of methamphetamine manufacturing methods. During the ride, he asked Ruggiero to tell
19 Reynolds he wanted to see her.

20 It is undisputed that before Reynolds or Johnson asked Inman any questions in CCDC on
21 January 19, 2006, he was handed the Advice of Rights form and told to read along as his rights were
22 orally recited.¹ Inman placed his initials before each of his enumerated rights and signed the Waiver of
23 Rights form. The waiver of rights was witnessed by both Reynolds and Johnson. Reynolds and
24 _____

25 ¹ The form stated: “Before we ask you any questions, you must understand your rights. You
26 have the right to remain silent. Anything you say may be used against you in court. You have the right
27 to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer
28 with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any
questioning if you wish. If you decide to answer questions now without a lawyer present, you have the
right to stop answering at any time.”

1 Johnson both testified that Inman was eager to talk to them. Inman himself acknowledged that he asked
2 to speak with Reynolds and wanted to talk with her. He did not claim in his testimony that he did not
3 understand his rights.

4 The court finds that Inman received and waived his Miranda warnings. He signed a written
5 waiver after initialing each of his Miranda rights, acknowledged he understood his rights, and wanted to
6 talk with Reynolds and Johnson. Inman is not a stranger to the judicial system. He testified he has six
7 felony convictions. He also testified that he was interviewed by law enforcement officers while in
8 prison on three separate occasions, declined to make any statements, and walked out of the interview on
9 one of these occasions. Special Agent Bob Hunt, the case agent in this case, was present during two of
10 the three interviews. Inman testified he recognized Hunt was the "shot caller," or person in charge,
11 even though Hunt said very little during either of the interviews. Inman's familiarity with the criminal
12 justice system and knowledge of his legal rights is also illustrated by his testimony that after being
13 arrested for the battery domestic violence charge, he made a deal with the state to serve six months
14 concurrent with his pending felony drug charge. He did so because he knew doing this would require
15 the Attorney General to pick him up on his pending felony charge before the expiration of his six-
16 month sentence.

17 Inman also testified about his motivation for wanting to talk with Reynolds about the Aryan
18 Warriors investigation after refusing to cooperate in the three prior interviews he had with law
19 enforcement officers while in prison. He testified that he wanted help with his state case, and he did not
20 want to be indicted on RICO charges. He decided to talk with Reynolds because he had been out of
21 custody, had a job and a girlfriend, and did not want to go back to prison. However, Inman was candid
22 that although he asked Reynolds if she would keep him out of prison if he talked, Reynolds said that she
23 could not make him any promises other than she would talk with Bob Hunt and her boss to see what, if
24 anything, they could do for him. Inman testified that Reynolds clearly conveyed that she did not have
25 any authority to promise him anything.

26 Reynolds twice testified, on direct and re-direct examination, that she told Inman she would
27 speak to the prosecutor in his state case and let the prosecutor know Inman was cooperating. However,
28 when she was asked on direct examination whether she did anything for Inman, she testified she did

1 nothing at all other than advise the case agent of Inman's offer to cooperate. At first blush, Reynolds'
2 testimony that she told Inman she would speak to the prosecutor in his state case is inconsistent with
3 her testimony that she made no promises at all. However, after hearing the testimony of Reynolds,
4 Johnson, and Inman, the court concludes that Reynolds conveyed to Inman that **if** the government
5 decided to take him up on his offer to cooperate, she would speak to the prosecutor in his state case.
6 This is consistent with Inman's own testimony that Reynolds clearly conveyed she did not have any
7 authority to promise him anything and would talk with Bob Hunt and her boss to see what, if anything,
8 they could do for him.

9 The court found Inman to be intelligent, articulate, and for the most part, credible. The court
10 found Inman's testimony credible that he asked to speak with Reynolds because he knew she had been
11 investigating him for years, and he wanted her help in his upcoming sentencing on his state charge. The
12 court found Inman credible that he offered to work for the agents to obtain information about the Aryan
13 Warriors in return for the investigators' assistance at his upcoming sentencing, and agreement not to
14 indict him on federal RICO charges arising out of his relationship with the Aryan Warriors. The court
15 also found Inman credible that he asked Reynolds three times during the interview on January 19, 2006
16 whether she was wearing a wire and that Reynolds assured him she was not.

17 Inman testified that when Reynolds and Johnson returned January 20, 2006, he was told that
18 Reynolds and Johnson had spoken to Bob Hunt who said "nothing helped, nothing hurt," and that
19 Reynolds and Johnson stated, "Nothing will come of this." The court found this testimony credible.
20 Inman's testimony—that he was told "nothing will come of this" is also remarkably similar to Johnson's
21 testimony that Inman was told on January 20, 2006 on the return visit to CCDC that the information
22 Inman had provided was not useful and unless Inman had something more significant to add, "there
23 would be nothing more we would be doing with him." The court concludes that Inman may very well
24 have subjectively believed that nothing he said would come back to haunt him in court because his
25 interview was not recorded, Reynolds assured him she was not wearing a wire, and his offer to
26 cooperate was refused. However, these discussions occurred on January 20, 2006, *after* Inman received
27 and waived his Miranda warnings and spoke with Reynolds and Johnson for an hour and a half. The

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1 written waiver of rights form Inman initialed and signed on both dates clearly advised him that anything
2 he said could be used against him in court.

3 The court found Ruggiero credible that while being transported to CCDC, Inman was talkative
4 and made inculpatory statements despite being administered Miranda warnings and talked about his
5 pending state case as “no big deal.” The court also found Reynolds and Johnson credible that they both
6 told Inman they had no authority to offer him anything but would discuss his offer to work for the
7 government with supervisors.

8 The court finds that Inman’s waiver of his Miranda rights was knowing and intelligent. The
9 court also finds Inman’s statements to Reynolds and Johnson were voluntary. In analyzing the
10 voluntariness of a waiver, the focus is on the absence of police overreaching. United States v. Cazares,
11 121 F.3d 1241, 1244 (9th Cir. 1997) (quoting Colorado v. Connelly, 479 U.S. 157, 170 (1986)). The
12 test for voluntariness is whether, under the totality of the circumstances, “the government obtained the
13 statement by physical or psychological coercion or by improper inducement so that the suspect’s will
14 was overborne.” United States v. Male Juvenile, 280 F.3d 1008, 1022 (9th Cir. 2002) (citation and
15 internal quotation marks omitted). There is no evidence in the record to support a finding of police
16 overreaching. Inman himself testified that he did not feel threatened or scared at any point during the
17 interview. He also testified that Reynolds clearly conveyed she had no authority to offer or promise
18 him anything. Thus, even if she did tell Inman she would inform the state prosecutor he had
19 cooperated, the Ninth Circuit has held that “inducements to cooperate are not improper and do not
20 render a suspect’s statement involuntary unless under the total circumstances, it is plain that they have
21 overborne the free will of the suspect.” United States v. Okafor, 285 F.3d 842, 847 (9th Cir. 2002).
22 The court found Inman to be an intelligent, articulate, astute, and assertive young man. His will was not
23 overborne by Reynolds or Johnson. Under the totality of the circumstances, Inman’s waiver of Miranda
24 rights was knowing, intelligent, and voluntary.

25 **B. Inman’s Sixth Amendment Arguments**

26 At the time Inman was interviewed by Reynolds and Johnson at CCDC, he was in custody on a
27 state felony drug charge. Although the government disputes whether Reynolds and Johnson were aware
28 he had counsel appointed in this case, the court concludes otherwise. Inman was in custody on this

1 charge as a result of Reynolds' investigation. Reynolds submitted the case for prosecution and obtained
2 a warrant for his arrest. As a result of that warrant, a detainer was lodged. At the time the charge was
3 filed, Inman was in prison at High Desert. When he finished his sentence, he was brought back to state
4 court, made an appearance, and was released on bail. He received permission to leave Las Vegas and
5 travel to Reno where he was arrested on the battery domestic violence charge which resulted in a
6 violation of the conditions of his bail on the state charge. Reynolds was aware he had made a court
7 appearance on the charge resulting from her investigation and that Inman had been released on bail,
8 rearrested, and brought back to Las Vegas on her case. She is an experienced police officer and
9 understood he had made an appearance in court and must have had counsel. Johnson also testified that
10 he was aware that most people who are in custody have counsel.

11 The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the
12 right . . . to have the Assistance of Counsel for his defense." U.S. Constitution, Amendment VI. The
13 right to counsel attaches after initiation of adversarial judicial proceedings. Kirby v. Illinois, 406 U.S.
14 682, 689 (1972). United States v. McNeil, 362 F.3d 570, 572 (9th Cir. 2004) (right to counsel attached
15 at indictment). However, the Sixth Amendment of right to counsel is "offense specific." McNeil v.
16 Wisconsin, 501 U.S. 171, 175 (1991). The Sixth Amendment right to counsel is not violated when a
17 defendant is questioned regarding offenses for which he has not been charged. Id. Inman was in state
18 custody for introducing drugs into the state prison system. The government concedes that his drug
19 charge was related to his activities as an Aryan Warrior and this federal RICO conspiracy charge.
20 However, the government cites Texas v. Cobb, 532 U.S. 162 (2001), to support its position that Inman
21 did not have a Sixth Amendment right to counsel on the uncharged offenses Reynolds and Johnson
22 interviewed him about in CCDC on January 19 and 20, 2006.

23 In Cobb, the United States Supreme Court declined to adopt the view of some lower courts that
24 if a charged offense is "factually related" to an uncharged offense, the Sixth Amendment right to
25 counsel attaches. The Supreme Court held that when the Sixth Amendment right to counsel attaches, it
26 encompasses offenses that "even if not formally charged, would be considered the same offense under
27 the Blockburger test." Id. at 173. The Blockburger test requires that "where the same act or
28 transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine


1 whether there are two offenses or only one, is whether each provision requires proof of a fact which the
2 other does not.” Id. (citing Blockburger v. United States, 284 U.S. 299, 304 (1932)).

3 Inman’s state charge for introducing drugs into the state prison and his pending RICO
4 conspiracy charge do not meet the Blockburger test. They are not the same offenses. Thus, although
5 Inman had counsel at the time he was questioned in CCDC, he did not have a Sixth Amendment right to
6 counsel with respect to uncharged offenses. Inman testified he was not asked any questions about his
7 pending state case. His Sixth Amendment right to counsel was not violated when Reynolds and
8 Johnson questioned him, after administering Miranda warnings, about uncharged offenses.

9 For all of the foregoing reasons,

10 **IT IS THE RECOMMENDATION** of the undersigned United States Magistrate Judge that
11 Inman’s Motion to Suppress (Dkt. #405) be **DENIED**.

12 Dated this 13th day of March, 2009.

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15 PEGGY A. LEEN
16 UNITED STATES MAGISTRATE JUDGE
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